that he did not draft it in clearer terms. It is also puzzling why he did not sign P1 as a contracting party. Signing by him of P1 is not absolutely essential in this case. Nonetheless the absence of his signature in P1 is particularly pertinent. No explanation was given by him as to why he did not find it necessary for him to sign P1. It seems to me that he must have entertained some uncertainty over the said premises. As a solicitor he must have realised at that time at any rate that there were other matters pertaining to the said premises still unknown to him and like a prudent purchaser he would not wish to be bound irrevocably there and then. It is not unnatural that he should by P1 show the intention of the parties to go ahead with the transaction and at the same time allow him an opportunity to reconsider should he subsequently discover anything adverse affecting the said premises. All these facts give rise to serious doubts as to whether plaintiff truly intended P1 to be binding on him irrevocably.

It is not in dispute that at the time when P1 was prepared, the parties had agreed on the price of the said premises. Invariably in a sale and purchase transaction price is the foremost consideration and is the first matter to be negotiated. But price alone is obviously not the end of the transaction and there are other areas which would have to be negotiated and agreed upon. This must have been in the minds of both the plaintiff and the defendant at the time. It is quite unrealistic to say as the plaintiff said that the sale and purchase agreement to be prepared and signed within one week later would contain the same terms and conditions as in P1 "with no addition or otherwise". This piece of evidence I am unable to accept. In my experience no solicitor ever prepares for a client a sale and purchase agreement with only the terms specified in P1; the least he would do would be to incorporate the Singapore Law Society's Conditions of Sale 1981.

The defendant appears to me to be an astute businessman. He required the sale and purchase agreement to be prepared by his solicitor and laid down his condition that the agreement must be signed within one week with the 10% deposit to be paid on signing. He took pains to write out the name and address of his solicitor on P1. He said:

"Once we agreed to the price I told prospective buyer to go to my lawyer's office, Ong Tiang Choon, to sign the agreement and to pay the 10% deposit and also I told the buyer that completion was to take place 8 weeks from the signing of the agreement. These 3 were my conditions."

In that frame of mind it seems to be highly unlikely that he intended P1 to be a concluded and binding contract. It is true that he accepted the sum of $500 from the plaintiff but he did not require it; it was given to him. Having received it, he made a point of stressing what he signed for: the insertion of the word "received" therein and his signing below shows that by signing he wished to acknowledge receipt of the sum of $500 only. Clearly but for the receipt of the sum he would not have signed P1. It seems to me that when the defendant insisted that the sale and purchase agreement to be signed within 1 week with the deposit to be paid, he contemplated the signing of that agreement as the binding agreement between him and the plaintiff.

For all these reasons I have come to the conclusion that the parties did not intend to be bound by P1 as a concluded contract but by the sale and purchase agreement to be prepared by the solicitors for the defendant and to be signed later. The plaintiff's claim therefore fails. I see no reason in this case why costs should not follow the event. I therefore dismiss his claim with costs.

Claim dismissed.

Solicitors: *Joethy & Co.; Chung & Co.*

RE APPLICATION OF LEO BOH BOEY

[O.C.J. (Wee Chong Jin C.J.) November 5, 1985]

[Singapore – Originating Motion No. 39 of 1985]

Administrative Law – Mandamus – Application for – Commissioner for Labour declining jurisdiction and failing to exercise power under Workmen's Compensation Act, 1975, s. 24.

Workmen's Compensation – Security guard killed at place of work – Unlawful killing – Claim – Workmen's Compensation Act, 1975, ss. 24, 25 & 30.

In this case the applicant's husband was employed as a security guard by a security agency and when so employed was killed at his place of work on October 29, 1983 in circumstances which point towards an unlawful killing. The employer gave notice of the occurrence of the said accident and death of the workman to the Commissioner for Labour. The Commissioner by letter required the employer to supply certain information. The employer supplied this information and asked the Commissioner to expedite the claim. About a year later the Commissioner referring to the Employer's Notice of the accident stated that from the

facts presented "the accident did not arise out of and in the course of the deceased's employment. Therefore, this case would not come within the ambit of the Workmen's Compensation Act. Please note that we will take no further action on the case". On an application for *mandamus*,

Held: (1) section 24(1) of the Workmen's Compensation Act 1975 imposed a duty on the Commissioner to make assessment as to the amount of compensation payable by the employer to the injured workman or a dependant of the deceased workman;

(2) section 24(2) imposed a duty on the Commissioner to serve on the employer and the workman, or the dependant as the case may be, a notice stating the amount of compensation payable in accordance with the assessment made under section 24(1);

(3) in the exercise of the court's discretion an order for *mandamus* should be made directing the Commissioner to assess and make the order of the amount of compensation payable in respect of the matter before him in accordance with section 24(2) directing him to serve the requisite notice on the employer and the applicant in this case.

ORIGINATING MOTION.

Karuppan Chettiar for the applicant.

Jeffrey Chan (Dy. Senior State Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering oral Judgment): In these proceedings the undisputed facts are these. The applicant's husband was employed as a security guard by a security agency and when so employed was killed at his place of work on October 29, 1983 in circumstances which point towards an unlawful killing.

On November 7, 1983 the employer gave notice of the occurrence of this "accident" which resulted in the death of the workman to the Commissioner, who, under the Workmen's Compensation Act, is the Commissioner for Labour. On November 21, 1983 the Commissioner by a letter required the employer to supply certain information as set out in that letter and in reply thereto the employer on November 24, 1983 supplied the required information and asked the Commissioner to expedite the "claim".

Almost a year later on November 7, 1984 the Commissioner by a letter to the employer referring to the Employer's Notice of the accident dated November 1983, stated as follows:

"From the facts presented, it would appear that the accident did not arise out of and in the course of the deceased's employment. Therefore, this case would not come within the ambit of the Workmen's Compensation Act.

Please note that we will take no further action on the case."

I now turn the relevant provisions of the Act. Section 24(1) and (2) reads as follows:

"24.-(1) Subject to the provisions of this Act the Commissioner shall have power to assess and make an order on the amount of compensation payable to any person on any application made by or on behalf of that person.

(2) The Commissioner shall cause to be served on the employer and the person claiming compensation personally or by registered post a notice stating the amount of the compensation payable in accordance with the assessment made by the Commissioner under subsection (1)."

In my judgment section 24(1) imposes a duty on the Commissioner to make an assessment as to the amount of compensation payable by the employer to the injured workman or a dependant of the deceased workman. It may well be that, as in the present case, he arrives at the opinion that no compensation is payable. In that event, it is incumbent on him to assess it at nil.

Section 24(2) imposes a duty on the Commissioner to serve on the employer and the workman, or the dependant as the case may be, a notice stating the amount of compensation (even a nil assessment) payable in accordance with his assessment made under section 24(1). Where the employer or the workman objects to the notice of assessment of compensation issued under section 24(2), the Commissioner must conduct a hearing and hand down a decision and in pursuance of such a decision make such an order for the payment of compensation as he thinks just.

Section 30 of the Act confers the powers of a district judge on the Commissioner for the purpose of summoning and examining witnesses and requires him to make a memorandum of the substance of the evidence of every witness and this he has to do when he has to conduct a hearing under section 25.

In those circumstances it seems plain to me that the Commissioner in the present case has declined jurisdiction and failed to assess as required by section 24(1) the amount of compensation payable to the dependant of the deceased workman. In the result and in the exercise of my discretion an order for mandamus is hereby made directing the Commissioner to assess and make an order on the amount of compensation payable in respect of the matter before him and, in accordance with section

24(2), directing him to serve the requisite notice on the employer and the applicant in this Originating Motion. There will be no order as to costs.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

A MALAYSIAN REPORTS

HAMZAH BIN ABDUL MAJID & ANOR. v. SUNGEI WAY LEASING SDN. BHD.

[S.C. (Seah, Syed Agil Barakbah & Wan Hamzah S.C. JJ.) April 22 & October 26, 1985]

B

[Kuala Lumpur – Federal Court Civil Appeal No. 275 of 1984]

Practice and Procedure – Summary Judgment by Registrar – Appeal dismissed by Judge in Chambers – No application made for further argument in open court C *within time limited – Appeal not properly brought – R.H.C. 1980, O.14 & O.56 r.2 – R.S.C. 1980, r. 56 – Court of Judicature Act, 1964, s.68(2).*

In this case summary judgment had been given by the Registrar. The appeal was dismissed by the High Court in Chambers. No application was made for the further argu- D ment in open court, orally or within four days from the day of the order. A written application was made subsequently and the learned Judge certified that he did not require further argument.

Held: the appeal had not been properly brought and should therefore be struck out.

E

[*Editorial Note:* The present case seems to indicate that the appellants, even if they had failed to appeal within the time and manner prescribed, may appeal to the Supreme Court under R.S.C. 1980, Rule 56 for leave if they can show merits in their appeal.]

Cases referred to:

F

(1) *Ng Cheng Yoon* v. *Mah binti Mat Isa* [1981] 1 M.L.J. 218.
(2) *Seldon* v. *Wilde* [1910] 2 K.B. 9; [1911] 1 K.B. 701
(3) *Arumugam Pillai* v. *Government of Malaysia* [1980] 2 M.L.J. 283.
(4) *Tara Rajaratnam* v. *Datuk Jaginder Singh & Ors.* G [1981] 1 M.L.J. 97.
(5) *Ratnam* v. *Cumarasamy* [1965] 1 M.L.J. 228.

HIGH COURT.

R.D. Rajasingam for the plaintiff.
H *S.L. Lai (Miss)* for the defendants.

Abdul Razak H.: Permohonan ini ialah ulang bicara atas keputusan yang telah dibuat olih Penolong Kanan Pendaftar memerintah pihak pemohon (applicant) membayar wang sebanyak I $73,449.53 sen sebagai kerugian yang ditimpanya setelah trailer yang disewa-belikan (Hire-purchased) kepada pihak pemohon itu bertemu dengan suatu nahas dan menimpa kerosakan. Kenyataan tuntutan (statement of claim) pihak menentang (respondent) itu menyatakan bahawa adalah perjanjian antaranya dengan pihak pemohon, iaitu pihak